Supreme Court, U.S.
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No. 95-644

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

ISLAMIC REPUBLIC OF IRAN,
Petitioner,

v.

MCKESSON CORPORATION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, in deciding a second interlocutory appeal brought by Iran, the court of appeals correctly applied the law of the case doctrine to reject Iran's argument under the "direct effect" clause of the commercial activity exception to sovereign immunity, on the basis that the court's earlier analysis was unaffected by this Court's opinion in *Weltover v. Republic of Argentina*, 504 U.S. 607 (1992).

2. Whether this Court should hear Iran's new argument that an international agreement precludes the Overseas Private Investment Corporation, an agency of the United States, from suing Iran, when Iran failed to raise this argument in the courts below during the more than seven years that this case has been in litigation.

PARTIES TO THE PROCEEDING AND RULE 29.6 LISTING

1. Respondent McKesson Corporation, a Delaware corporation, is the parent company of the following wholly-owned subsidiaries who are Respondents and corporations organized under the laws of the State of California: Foremost Shir, Inc., Foremost Tehran, Inc. and Foremost Iran Corporation. A complete list of the subsidiaries and affiliates of McKesson Corporation is included in the Appendix. Respondent Overseas Private Investment Corporation is a corporation organized under the laws of the United States. It is an agency of the United States established pursuant to 22 U.S.C. §§ 2191-2199.

2. Petitioner, the Islamic Republic of Iran, is a foreign state.

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In 1959, Foremost-McKesson, Inc., a Maryland corporation with its principal place of business in California,[1] agreed to join with a group of Iranian citizens in estab-

[1] The name of Foremost-McKesson, Inc. was changed to McKesson Corporation ("McKesson") on July 27, 1983. In a corporate reorganization, the assets of the Maryland corporation, including the claims at issue in this litigation, were sold on November 21, 1994, to SP Ventures, Inc., a new Delaware corporation, which subsequently changed its name to McKesson Corporation.

lishing a dairy in Iran, the Sherkat Sahami Labaniat Pasteurize Pak ("Pak Dairy"). 2a-3a.[2] According to the amended complaint in this case, McKesson agreed to furnish "one-half of the required capital, and all the necessary management skills and personnel, engineering data, sources of material, procurement services, ingredients and packaging. Through separate agreements, McKesson agreed to provide technical assistance as needed, and licensed its trademarks in exchange for receipt of royalties." A3a. In 1979, at the time of the Iranian Revolution, McKesson held 31 percent of the equity interest in Pak Dairy. *Id.*

On January 22, 1982, McKesson, including several of its subsidiaries, and the Overseas Private Investment Corporation ("OPIC"),[3] filed a complaint in the United States District Court for the District of Columbia against the Islamic Republic of Iran ("Iran"), several agencies or instrumentalities of Iran which were shareholders in Pak Dairy, and Pak Dairy itself. The complaint alleged that Iran, acting through the co-defendant agencies and instrumentalities, illegally divested McKesson of its equity interest in Pak Dairy. *Id.* Pursuant to Executive Order No. 12,294, 46 Fed. Reg. 14,111 (1981), the litigation was stayed while the plaintiffs presented their claims against Iran to the Iran—United States Claims Tribunal ("Claims Tribunal") in The Hague. A4a. The Claims Tribunal issued an award on April 10, 1986, ruling by a 2-1 majority that (1) the Iranian Government had interfered with McKesson's property rights in Pak Dairy and had unlawfully deprived McKesson of the dividends declared by Pak Dairy in 1979 and 1980, and (2) as of January 19, 1981, the Claims Tribunal's jurisdictional cut-

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[2] Citations are to the Appendix to the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit (October 19, 1995) ("Petition") (A ——).

[3] OPIC had insured a portion of McKesson's investment in Pak Dairy against expropriation and other risks.

off date, Iran's interference with McKesson's property rights did not amount to a deprivation of the equity interest. *Foremost Tehran, Inc. v. The Government of the Islamic Republic of Iran et al.*, 10 Iran—United States Claims Trib. Rep. 228, 250 (1986); A103a; A4a-5a.

On April 1, 1988, the plaintiffs revived this lawsuit. They filed a motion for partial summary judgment against Iran on the issue of liability, alleging that McKesson's equity interest in the dairy had been expropriated by Iran at a time after the 1981 cut-off date of the Claims Tribunal's jurisdiction. A5a. The district court denied Iran's motion to dismiss. The court asserted subject matter jurisdiction against Iran under the third clause of section 1605(a)(2) of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330 and 1602-1611 ("FSIA"), which declares an exception to immunity when the action is based upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a "direct effect" in the United States.

Iran filed its first interlocutory appeal, raising a number of the jurisdictional arguments that the district court had rejected.[4] The court of appeals sustained the district court's determination that the facts alleged by the plaintiffs exhibited sufficiently direct effects to confer subject matter jurisdiction under the third clause of section 1605(a)(2). *Foremost-McKesson, Inc. v. The Islamic Republic of Iran*, 905 F.2d 438, 450 (D.C. Cir. 1990) (*"McKesson I"*); A72a; A96a. The court reasoned that, "[h]ere, the effects alleged were foreseeable, substantial and direct" and, specifically, that "[t]he alleged effects of freezing-out American corporations in their ownership of Pak Dairy are at least as substantial and direct as effects alleged in prior cases in which this court and other cir-

[4] Of these arguments, only the "direct effect" issue is raised in the present petition for certiorari and is discussed here.

cuits have found 'direct effects.'" 905 F.2d at 451; A96a-97a.

The court of appeals remanded to the district court for more extensive findings on the degree of control exerted by Iran over Pak Dairy and over the shareholder entities alleged to be government-controlled. 905 F.2d at 453, A102a. On remand, Iran argued that this Court's opinion in *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992) ("*Weltover*"), which was issued after the court of appeals' decision in *McKesson I*, had changed the law applicable to this case by rejecting the substantial and foreseeable test in favor of an immediate consequence test. A67a. The district court held that *Weltover* was factually distinct from the instant case and could not be read as having overruled the findings of the district court and the court of appeals of a direct effect in the United States in this case. A68a-69a. The district court pointed out that:

> The Court of Appeals enumerated the many contacts between Pak Dairy and the McKesson companies in the United States, including the constant flow of capital, management personnel, engineering data, and machinery between the United States and Iran. As a direct, and immediate, consequence of Iran's allegedly wrongful acts, there was a discontinuance of dividends, a stoppage of shareholder communications, and a cessation in the transfer of machinery and other supplies between the two countries, the impact of which was felt in the United States.

A69a.

The district court also found that a principal/agent relationship existed between Iran and its co-defendants, giving the court subject matter jurisdiction over Iran for the acts of its instrumentalities. A70a.

Iran filed a second interlocutory appeal. In its decision on that appeal, reported at *McKesson Corp. v. Islamic*

Republic of Iran, 52 F.3d 346 (D.C. Cir. 1995) ("*McKesson II*"), A1a, the court of appeals affirmed the judgment of the district court. On the "direct effect" issue, it held that:

> While *Weltover* changed the law by removing foreseeability and substantiality from consideration, it did not undercut the remaining reason we gave for applying the commercial activity exception of § 1605(a)(2)—that the effects were "direct." Because this portion of our prior opinion is unaffected by *Weltover*, it remains the law of the case, not subject to reconsideration in this second interlocutory appeal.

52 F.3d at 351; A9a-10a.

The court also pointed out in *McKesson II* that it had held in *McKesson I* that the direct effects of Iran's alleged actions included a cutting off of all of the dairy's existing commercial ties with McKesson in the United States. 52 F.3d at 350; A8a-9a.

The court of appeals denied Iran's petition for rehearing and suggestion for hearing *en banc*.

ARGUMENT

I. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH THIS COURT'S DECISION IN *WELTOVER*

Petitioner argues that the court of appeals incorrectly applied the "direct effect" test articulated in *Weltover*. On the contrary, it is Petitioner that misunderstands the teaching of *Weltover*. The court of appeals' decision is consistent with *Weltover* and with the circuit decisions that have applied its direct effect test.

Since the court below had properly found in *McKesson I* that the effect of Iran's wrongful conduct was *direct* (as well as substantial and foreseeable), it correctly concluded in *McKesson II* that this Court's articulation of

the legal standard in *Weltover* did not affect the earlier decision. Moreover, the district court's finding that the effects in this case were direct, which the court of appeals affirmed, is essentially a fact-based matter. Review by this Court is not warranted.

A. Iran Misconceives the Holding of *Weltover*

Weltover involved a breach-of-contract action brought against the Republic of Argentina under the FSIA by two Panamanian corporations and a Swiss bank (for payment of a debt). One of the jurisdictional questions was whether the acts in question caused a direct effect in the United States under Section 1605(a)(2). The Second Circuit framed the issue before it in that case as "whether a foreign sovereign's nonpayment to a foreign plaintiff of a debt payable in the United States suffices to meet [the] statutorily-mandated nexus." *Weltover, Inc. v. Republic of Argentina*, 941 F.2d 145, 151 (2d Cir. 1991), *aff'd*, 504 U.S. 607 (1992). The Second Circuit reiterated its rejection of the view, held by some circuits, that, for an effect to be considered "direct," it must be both "substantial" and "foreseeable." It held that the threat of direct financial loss to the plaintiff established "directness." 941 F.2d at 152. Because plaintiffs were entitled to receive payment in New York, the act of non-payment was deemed to cause a direct effect in the United States.[5] 941 F.2d at 152-53.

This Court affirmed, holding that an effect is "direct" if it follows as an immediate consequence of the defendant's activity, regardless of whether the effect is also substantial and foreseeable. 504 U.S. at 618. This Court also held that, despite the fact that the plaintiffs were

[5] The Second Circuit explained that it was the foreign domicile of the plaintiffs that made this issue "troublesome": "[l]ocalizing the effect in the United States is more problematic when, as here, the plaintiff is a foreign corporation having few, if any, other contacts with the United States forum." 941 F.2d at 152.

"all foreign corporations with no other connections to the United States," the direct effect test was satisfied because New York was the place of performance for Argentina's ultimate contractual obligations. 504 U.S. at 619. As the court below remarked in *McKesson II*, the significance of *Weltover* stems from its rejection of the additional requirements of foreseeability and substantiality which some of the circuits had imposed on the "direct effect" test. 52 F.3d at 350; A8a.

The thrust of *Weltover* was, therefore, to reject an unduly restrictive reading of the "direct effect" clause and to establish the criterion for a foreign corporation to meet this statutory test in a suit against a foreign state in the United States.

Paradoxically, Petitioner urges that the Court's opinion in fact *narrowed* the immunity exception for all cases by limiting its application to situations where the foreign sovereign has assumed an obligation to pay the plaintiff in dollars in the United States. Petition at 7-9. This argument would stand *Weltover* on its head by making the sole point of U.S. nexus of the foreign plaintiffs in the *Weltover* fact situation (which nexus the Court found sufficient) a prerequisite for jurisdiction even where the plaintiff is a U.S. person or entity and hence other points of nexus exist for the direct effect test. It would mean that, although an unfulfilled obligation to make payment in the U.S. is by itself sufficient to satisfy the direct effect test, *no amount* of other effects, regardless of their directness, could satisfy the statutory test. Petitioner's constricted reading of *Weltover* is without support in the Court's opinion and, indeed, contrary to *Weltover's* holding that an effect is "direct" for purposes of Section 1605(a)(2) so long as it follows "as an immediate consequence of the defendant's . . . activity." 504 U.S. at 618.

B. The Courts Below Correctly Found a Direct Effect in This Case

The record here amply supports the conclusion reached by the two courts below that Iran's alleged actions affecting McKesson's interest in Pak Dairy caused a direct effect—an immediate consequence—on McKesson in the United States. The district court found that, as a direct and immediate consequence of Iran's allegedly wrongful acts, "there was a discontinuance of dividends, a stoppage of shareholder communications, and a cessation in the transfer of machinery and other supplies between the two countries, the impact of which was felt in the United States." A69a (footnote omitted). The court of appeals relied upon the cutting off of all existing commercial ties between Pak Dairy and McKesson, including the "constant flow of capital, management personnel, engineering data, machinery, equipment, materials and packaging, between the United States and Iran to support the operation of Pak Dairy." 52 F.3d at 350 (citation omitted); 8a.

Petitioner, clinging to its incorrect reading of *Weltover*, argues that these findings and the record on which they were based were insufficient to establish direct effects in the United States because (Petition at 7):

> [T]here was no obligation on the part of Pak Dairy to provide capital in the United States, management personnel in the United States, machinery, *etc.*, in the United States, nor was there any obligation to pay in the United States for the services that persons performed in Iran, or for the use of equipment sent from the United States to Iran, or to pay dividends in the United States. Rather, dividends were paid in Iran in local currency.

Petitioner's argument completely misses the point. First, as both courts below found, Iran's alleged wrongful discontinuance of the flow of capital, machinery, personnel, *etc., to Pak Dairy in Iran from McKesson in the United States* was sufficient to create the requisite direct effect in the United States.

Second, although the court of appeals did not find it necessary to reach the issues of Pak Dairy's discontinuing both the payment of dividends and the sending of shareholder communications to McKesson,[6] it is plain that these wrongful acts, caused by Iran, also caused direct effects in the United States. Iran argues that nonpayment of dividends did not cause a direct effect in the United States because the dividends were payable to McKesson in rials in Iran. Petition at 9. On the contrary, Pak Dairy's (and Iran's) wrongful decision to withhold McKesson's dividends had as a direct consequence McKesson's nonreceipt of the payments in the United States, regardless of where the monies were to be initially paid by Pak Dairy.[7]

In sum, Petitioner's reading of this Court's decision in *Weltover* as imposing, before a "direct effect" can be found in any case, a "requirement of an obligation to pay in the United States" [8] is flawed in every respect. It is supported by neither the language nor the logic of the *Weltover* opinion. The courts below properly assessed this case on its own facts and correctly applied the standard articulated by this Court in *Weltover*. They had no difficulty in finding that Iran's alleged wrongful acts, which ruptured every element of the long-standing rela-

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[6] The court of appeals merely noted that its earlier decision had not mentioned as a direct effect Pak Dairy's failure to pay cash dividends to McKesson (52 F.3d at 351, n.9, A9a at n.9), and it did not refer at all to the discontinuance of shareholder communications. The district court listed both actions as having direct effects in the United States. A69a.

[7] Iran also states that various invoices sent to Pak Dairy from McKesson in the U.S. were payable in U.S. currency in Iran, not in the United States. Petition at 8. There is no basis in the record for this assertion, for which Iran cites only its own reply brief in the court below. The record does not establish where the invoices were paid or payable.

[8] Petition at 9.

tionship between Pak Dairy and McKesson, caused a direct effect in the United States.

C. The Circuit Court Decisions Cited by Iran Do Not Support Its Position

The post-*Weltover* circuit court decisions relied upon by Iran (Petition at 11-12) are easily distinguishable from the instant case on their facts. In *United World Trade, Inc. v. Mangyshlakneft Oil Production Association*, 33 F.3d 1232 (10th Cir. 1994), *cert. denied*, 115 S. Ct. 904 (1995), the contract at issue called for the defendants to deliver oil from Kazakhstan to Sicily and to receive payment in Paris from the American plaintiff. In finding no direct effect in the United States, the Tenth Circuit emphasized that the defendants' performance of their obligations had "no connection at all with the United States." 33 F.3d at 1237. The present case, on the other hand, involves the interruption of a flow between the United States and Iran of funds, personnel, machinery, communications, *etc.*, in what had been an important and long-standing relationship between the two companies in their respective countries.

In *Antares Aircraft v. Federal Republic of Nigeria*, 948 F.2d 90 (2d Cir. 1991), *vacated and remanded*, 112 S. Ct. 3020 (1992), *aff'd*, 999 F.2d 33 (2d Cir. 1993), *cert. denied*, 114 S. Ct. 878 (1994), an American partnership leasing aircraft in Africa disputed the detention of its Nigerian-registered aircraft, during a stopover in Nigeria, for unpaid Nigerian airport fees. The Second Circuit observed that "[t]here is no evidence that the use of the aircraft was related to substantial commerce with the United States" and, further, the alleged tort had "no connection with the United States other than the citizenship or place of incorporation of the plaintiff." 999 F.2d at 36.[9] Here, of course, substantial commerce between

[9] Nonetheless, Judge Altimari dissented on the ground that "in light of *Weltover* . . . the American partnership suffered a direct

McKesson in the United States and Pak Dairy in Iran was involved.

General Electric Capital Corp. v. Grossman, 991 F.2d 1376 (8th Cir. 1993), also relied on by Iran, is distinguishable since the Eighth Circuit's finding of no direct effect in the United States was based on the reasoning that the American plaintiff's alleged future injuries were contingent and speculative in nature and thus no financial loss resulted as an immediate consequence of the acts complained of. 991 F.2d at 1385-86. In contrast, McKesson suffered immediate financial loss when Iran wrongfully withheld McKesson's dividends.

The pre-*Weltover* decision cited by Petitioner,[10] *Gregorian v. Izvestia*, 871 F.2d 1515 (9th Cir. 1989), *cert. denied*, 493 U.S. 891 (1989), is inapposite because the Ninth Circuit there applied the requirements of substantiality and foreseeability that this Court subsequently rejected in *Weltover*. 871 F.2d at 1527. Moreover, the Ninth Circuit only noted that the district court had not pointed to any provision of the alleged agreements between the defendant and the plaintiffs that created a nexus between the defendant's activities and the United States, and it remanded the case for factual findings on the "direct effect" issue. *Id.* at 1527-28.[11]

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effect in the United States within the meaning of § 1605(a)(2) of the Foreign Sovereign Immunities Act." 999 F.2d at 37.

[10] Petition at 12.

[11] For other post-*Weltover* applications of the "direct effect" standard, *see, e.g., Walter Fuller Aircraft Sales v. Republic of Philippines*, 965 F.2d 1375, 1387 (5th Cir. 1992) (*Weltover* adopted a "more lenient standard" for the direct effect test, reinforcing the court's conclusion that the defendant's breach of its hold harmless agreement with the U.S. plaintiff caused a direct effect in the United States); *AMPAC Group Inc. v. Republic of Honduras*, 797 F. Supp. 973, 977 (S.D. Fla. 1992), *aff'd*, 40 F.3d 389 (11th Cir. 1994) (under *Weltover* rule, allegations that defendants' wrongful acts caused U.S. plaintiff to incur substantial costs and suffer

Accordingly, the courts below properly applied in this case the standard that was articulated by this Court in *Weltover*.

II. THE DECISION OF THE COURT OF APPEALS WAS IMPARTIAL

Petitioner asserts that the decision of the court below suggests the appearance of partiality against Iran, given the strained relations between Iran and the United States. Petition at 13-15. This startling and unsubstantiated claim of bias on the part of the U.S. courts is based only on Petitioner's "suspicion," [12] which is, in turn, derived solely from the fact that the court of appeals and the district court ruled against it on the "direct effect" issue.

That the courts below have been impartial is manifested by the record compiled in this litigation over the more than seven years during which Iran's every jurisdictional argument has been conscientiously heard and adjudicated by those two courts.[13] The court of appeals' scrupulous consideration of Iran's contentions has included the allowance of two interlocutory appeals, the first of which led to a remand. The case has yet to reach the merits.

Petitioner cites two past decisions of this Court,[14] neither of which is relevant here. In *Zschernig v. Miller*,

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injury in Florida were sufficient to support jurisdiction under the FSIA).

[12] Petition at 14.

[13] Indeed, it has been Respondents' position that the district court has, in some respects, been too deferential to Iran's sovereignty. In declining to impose a sanction against Iran for noncompliance with discovery, the court observed that Iran had been "less than cooperative" but that "[w]hile not endorsing Iran's tactics, the Court must be mindful of the sovereignty of Iran." A31a. The court of appeals dismissed on procedural grounds Respondents' cross-appeal on this issue. 52 F.3d at 353; A14a.

[14] Petition at 14.

389 U.S. 429 (1968), the Court held an Oregon statute to be unconstitutional as applied because it was an intrusion by the State into the field of foreign affairs, which is entrusted to the President and the Congress. Similarly, in *Kolovrat v. Oregon*, 366 U.S. 187 (1961), the Court held that an Oregon law on inheritance must give way to an international agreement of the United States on the same subject. Manifestly, these decisions do not provide any support for Iran's argument that this Court should hear its unsubstantiated claim that the court of appeals was partial.

III. THIS COURT SHOULD NOT HEAR PETITIONER'S NEW ARGUMENT THAT SUBJECT MATTER JURISDICTION IS LACKING OVER OPIC'S CLAIM

Petitioner argues that the courts of the United States lack subject matter jurisdiction over OPIC's claim in this litigation on the ground that an international agreement between the United States and Iran provides the sole avenue for resolving the claims to which it applies, including OPIC's subrogated claim against Iran. Petition at 15-16.

There are several independent reasons why this Court should not review the question. First, Iran's counsel acknowledges that the argument "was brought for the first time to [his] attention" after the court of appeals denied Iran's petition for rehearing. Petition at 6. Thus, the argument was not raised by Iran in its Answer or in its Motion to Dismiss, which were filed in 1988, nor did Iran ever raise it in the more than seven years of litigation that preceded the filing of this petition. This Court should not entertain the issue as a matter of first impression.

Second, as Iran acknowledges,[15] since this issue does not address the McKesson portion of the complaint, even

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[15] *Id.*

resolution of the issue in Iran's favor would not relieve Iran of the obligation to defend this case on the merits.

Third, the argument is without merit because, with respect to this dispute, Iran has long ago waived such rights as it may have had under the international agreement in question, the Agreement Between the United States and Iran on Guaranty of Private Investments, exchange of notes in Tehran September 17 and 21, 1957; entered into force September 24, 1957, T.I.A.S. No. 3913 8 U.S.T. 1599 ("Investment Guaranty Agreement").[16] Iran points out that lack of subject matter jurisdiction may be raised at any time, citing *Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982) ("*Bauxites*"). Petition at 6. In *Bauxites*, this Court stated that no action of the parties, whether by consent or waiver, can confer subject matter jurisdiction upon a federal court where it would not otherwise exist. 456 U.S. at 702. This does not mean, however, that a party canot waive a right to which it is entitled by agreement, such as the right to arbitrate, thereby enabling the federal courts to exercise the subject matter jurisdiction that Congress has conferred on them.

The Investment Guaranty Agreement provides that "any claim against the government of Iran to which the Government of the United States of America may be subrogated . . ." under the specified guaranties "shall be the subject of direct negotiation between the two Governments. If within a reasonable period of time the two Governments are unable to settle the dispute by mutual agreement, the matter shall be referred for final and binding determination to a sole arbitrator. . . ." A163a.

Iran does not claim that it has ever, since this dispute arose during 1979-1981, sought to negotiate any aspect of the matter with OPIC or, more generally, the United States Government. Iran also does not claim—nor can it

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[16] The Investment Guaranty Agreement is reprinted in Appendix H of the Appendix to the Petition.

—that it has ever proposed to the United States Government that the dispute or a portion of it be referred to a sole arbitrator. Indeed, when OPIC filed its claim relating to aspects of this dispute with the Claims Tribunal in 1981, Iran did not invoke the Investment Guaranty Agreement. *See* Award of The Iran-United States Claims tribunal, 10 Iran-U.S. Cl. Trib. Rep. 228 (1986); A103a. Moreover, as noted above, Iran has not during the more than seven years of litigation of this case that preceded the filing of this Petition claimed any rights under the Investment Guaranty Agreement or even alluded to it.

"Like other contractual rights, the right to arbitrate is subject to waiver." GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION IN THE UNITED STATES 279 (1994). There is a waiver if the party claiming the arbitration right has acted inconsistently with that claim. Active participation in a lawsuit on the matter at issue, either as plaintiff or defendant, is clearly inconsistent with any intent to arbitrate and constitutes a waiver of the arbitration right. *Cabinetree of Wisconsin v. Kraftmaid Cabinetry, Inc.*, 50 F.3d 388, 390-91 (7th Cir. 1995); *Com-Tech Associates v. Computer Associates International, Inc.*, 938 F.2d 1574, 1576-78 (2d Cir. 1991); *Stone v. E.F. Hutton & Co., Inc.*, 898 F.2d 1542, 1543-44 (11th Cir. 1990); *Peterson v. Shearson/American Express, Inc.*, 849 F.2d 464, 467-68 (10th Cir. 1988); *National Foundation for Cancer Research v. A.G. Edwards & Sons, Inc.*, 821 F.2d 772, 774-75 (D.C. Cir. 1987). Here, Iran having failed to claim a right of arbitration during the fifteen or so years that this dispute has been ongoing and the more than seven years that Iran has been actively defending this lawsuit, has waived any right to arbitration.

CONCLUSION

The petition for a writ of certiorari shtould be denied.

Respectfully submitted,

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November 20, 1995

APPENDIX

APPENDIX

McKESSON CORPORATION
a Delaware Corporation
Its Subsidiaries and Affiliates

Domestic/Foreign Corporations and their Subsidiaries

Armor All Products Corporation (54.8%)
- Armor All International (FSC), Inc.
- Armor All Products GmbH
- Armor All Products of Canada, Inc.
- Armor All Products (U.K.) Limited

Beldere Corporation
- S.K.U., Inc. (50%)

California Golden State Finance Company

Calox International, S.A.
- Calox Ecuatoriana, S.A.
- Calox Panamena, S.A. (50%)
  - Capitales Asociados, S.A. (86.80%)
    - Gold Mills de Panama, S.A. (50%)
      - Harinas y Cereales, S.A.
      - Industrial Tecnica Panamericana, S.A. (50%)
      - Semolas de Panama, S.A. (50%)
  - Vehiculos Italianos, S.A.

City Properties, S.A. (20%)

Corporation of America

Crocker Plaza Company

First Aid, Inc.
- Zee Service, Inc.

Flex-Master Technology Holdings, Inc.

Foremost de Venezuela, S.A.

Foremost Iran Corporation

Foremost-McKesson Property Company, Inc.
- DC Land Company
- DCAZ Land Company
- Foremost Homes Hawaii, Ltd.
- HF Land Company

Foremost Shir, Inc.

Foremost Tehran, Inc.

Golden State Company, Ltd.

Golden State Insurance Company Limited

Golden State Milk Products Company

Goodman Manufacturing Company

Healthcare Delivery Systems, Inc.

Intercal, Inc. (15%)

International Dairy Engineering Co. of Asia, Inc.

Macfor International Finance Company
- La Vascongada, S.A.C. e I (10%)

McKesson Canada Inc.
- Media Health and Pharmaceutical Services Inc.
  - Good Neighbour Pharmacy Ltd.
  - Smith's Drug Store (Digby) Limited

McKesson (Cayman Islands) Inc.
- NADRO, S.A.de C.V. (22.67%)

McKesson International Investment Corp.
- N.V. Medicopharma (10%)

McKesson Outcomes Research Corporation

McKesson Transportation Systems, Inc.

McKesson Water Products Company
- Hygeia Bottled Water, Inc.

Millbrook Distribution Services Co.

Mohawk Liqueur Corporation

Penn-Chem Corporation

Sunbelt Beverage Corporation (10%)

Very Important Products, Inc.

West Wholesale Drug Co.

Zee Medical Canada, Inc.